IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.7790 OF 2005

Hindustan Petroleum Corporation Ltd. ...Petitioner.
Vs.
Pravind Fulchand Shah & Ors. ...Respondents.
....
Mr. N.V. Walawalkar with Mr.M. D. Siodia and Ms.Falguni Thakkar i/b. Rustomji & Ginwala for the Petitioner.
Mr.Mohan Pungalia for Respondent Nos.1 and 2.
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CORAM : DR.D.Y.CHANDRACHUD, J.

June 27, 2006.

ORAL JUDGMENT :

The Additional District Judge, Pune, has, by his order dated 12th September 2005, confirmed in appeal, the judgment of the Trial Court decreeing the suit instituted by the landlord for eviction on the ground that the premises being land, such land is reasonably and bonafide required by the landlord for erection of a building under Section 13(1)(i) of the Bombay Rent Act. At the hearing of the Petition, it has emerged that the reasoning of the Appellate Court has centered around paragraphs 23, 24, and 28 of the impugned judgment and order. The Appellate Court has held that the landlord has produced the building plan sanctioned by the

local authority for the erection of a new building. The Architect who submitted the plan was examined and he deposed to the effect that he had received his professional fees from the Plaintiff. The Appellate Court held that the landlord has established his financial capacity by demonstrating before the Court that he had approached a financial institution for the sanction of a loan of Rs.16 lakhs and which the institution was willing to sanction. In para 24 of the judgment, the Appellate Court has formed the following opinion:

> "The act on the part of the landlords to submit the building plan and to get it sanctioned from the Local Authority and to incur the expenses for the same is sufficient to establish the intention of the landlords that they required the said premises for their bona fide use and occupation."

2. On behalf of the Petitioner, it has been submitted that the principle which must govern the interpretation of Section 13(1)(i) has been elaborated in the judgment of the Supreme Court in **Dinanath Krishna vs. Gopala Krishna.**[1] The Supreme Court in that case dealt with the provisions of Section 21(1)(l) of the Karnataka Rent Control Act, 1961 which is to the following effect:

> "21. Protection of tenant against eviction.- (1)

1 1990 (Supp) SCC 767

> Notwithstanding anything contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or other authority in favour of the landlord against the tenant:
>
> Provided that the court may on an application made to it, make an order for the recovery of possession of a premises on one or more of the following grounds only, namely ....
>
> (l) that where the premises are land, such land is reasonably and bona fide required by the landlord for the erection of a new building which a local authority or other competent authority has approved or permitted him to build thereon."

The Karnataka High Court had (in its decision which went up in appeal to the Supreme Court) held that the test of bonafides and reasonableness has to be determined with reference to financial capacity and the approval of the plan. If the landlord demonstrated his financial capacity and produced a sanctioned plan, the High Court held that the requirement of the statutory provision has been established. The Supreme Court held that the view taken by the High Court on the interpretation of the provisions of 21(1)(i) was incorrect. The Supreme Court held thus:

> "The High Court, in our view, had misunderstood the scope of clause (1). The learned Judges understood it to mean that all that the landlord had to prove was that he had the financial capacity and had acquired the

> necessary sanction of the concerned authority. That the expressions “reasonably” and “bona fide” require more than mere financial capacity and the sanction of the authorities was not appreciated by the High Court. These two expressions are present in clause (h) also, but that clause deals with a different situation and it cannot, therefore, be read into clause (1). But the expressions in both the provisions must be understood with reference to the evidence adduced by the landlord as to the reasonableness and the bona fide character of his requirements. While clause (h) refers to a landlord's requirement of occupation of an existing building, clause (1) refers to a vacant land required by the landlord for construction of new building. His reasonable and bona fide requirements must be established by the landlord, irrespective and independent of any sanction which he may have obtained from the local authority. That the landlord has obtained the necessary sanction of the local authority and that he is financially capable of constructing a building will not by themselves mean that his requirements are reasonable and bona fide. Although his financial capacity may be one of the elements which may be taken into account, that by itself, in our view, would not be sufficient to establish the reasonableness and the bona fide character of his requirements.”

This judgment has been followed in a subsequent decision in **Kandaswamy vs. Board of Management, Haji Sri Ismail Said Mosque.**[2]

3. In view of the judgment of the Supreme Court the test of reasonableness and bonafides with reference to a statutory

2 (2001 3 SCC 614

provision similar to Section 13(1)(i) requires more than just financial capacity or the sanction to a building plan by the local authority. Section 21(1)(i) of the Karnataka Rent Control Act, 1961 is similar to Section 13(1)(i) of the Bombay Rent Act, 1947, with the difference that under the Karnataka Statute the landlord has to have the approval of the local authority or Competent Authority for building on the land.[3]

3The requirement of approval or of the permission of the local authority to build is not specifically made a part of the requirement of Section 13(1)(i) of the Bombay Rent Act, 1947.

> -3. This distinction explains the judgment of M.N. Chandurkar, J. for this Court in **Chandrakant vs. Hiralal,** (1983) Mh. L.J. 1100. The Learned Judge held thus :
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> "Undoubtedly, making of a building plan before a suit is filed, claiming relief under Section 13(1)(i) of the Bombay Rent Act, may be indicative of the bona fides of the landlord. The absence of such a plan on the date of the suit by itself will not, however, militate against the bona fides of the landlords. It is well known that litigations under the Bombay Rent Act take years before they are finally decided and the claim of the landlord is allowed. Even after a long spell of litigation there is always an uncertainty as to whether a landlord is really going to get possession either of the house or of the open plot, and while some landlords may choose to plan well in advance as to the nature of the building which they propose to have, it is quite possible that being uncertain about the final outcome of the litigation, a landlord, in his wisdom, may not want to incur the necessary expenditure of making a plan, or having the estimates made or of keeping a large bank balance to be utilised for the purposes of construction if and when, after a decade, he gets possession of the plot.

However, what is material for the purposes of the present case is that the provisions of Section 13(1)(i) also require that the land be required bonafide and reasonably for the erection of a building.

4. In the present case, the submission that was urged on behalf of the Petitioner was that the Appellate Court has disposed of the proceedings principally, if not only, on the basis that the landlord has a sanctioned plan and financial capacity. There is undoubtedly a bald observation in para 24 to the effect that the First Plaintiff intended to start his own business. There is merit in the contention of the Petitioner that the entirety of the evidence has not been considered by the Court below. In so far as the First Plaintiff is concerned, the attention of the Court has been drawn to the following admissions in cross-examination (at page 61 of the paper book):

> "The suit property is admeasuring about 608 sq.mts. We are constructing very small portion of the suit plot and rest of the plot will be kept vacant. ... I have started my office of construction in the year 1980 at my home at

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> Therefore, mere absence of a plan at the date of a suit would not necessarily mean that bona fides were wanting on the part of the landlord. So also the absence of sufficient actual balance in bank by itself cannot straightaway lead to an inference of want of bona fides."

> Law College Road. At present my office address is at Sheetal Apt. Prabhat Road, Flat No.1. The premises at Law College Road is now vacant. It was about 800 sq.ft."

In so far as the Second Plaintiff is concerned, the attention of the Court has been drawn to the following statements in the course of cross-examination:

> "26. It is true that previously I was doing business from my house, situated at Law College Road. I shifted my residence to Sheetal Apartment in 1988. The accommodation of Sheetal Apartment is sufficient for me. The accommodation of Law College Road is sufficient for my residence and business.
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> -28. After constructing the building, I keep the premises required for me and rest will be sold."

These replies which were elicited in the course of cross examination have a material bearing on the question of reasonableness and bona fides. They find no elucidation or judicial consideration in the judgment of the Court below.

5. Counsel submitted that an additional circumstance which ought to have been considered by the Court below and which was not considered was whether a partial decree for eviction would

meet the ends of justice. There is merit in this submission. Sub-section (3) of Section 13 specifically provides as follows :

> "(3) The Court may pass the decree on the ground specified in clause (h) or (i) of sub-section (1) only in respect of a part of the premises which in its opinion it is necessary to vacate for carrying out the work of repairs or erection."

Whether a partial decree for eviction would meet the ends of justice ought to have been considered, in view of Section 13(3). The First Plaintiff has specifically stated that construction is being carried out on a "very small portion of the suit plot and the rest will be kept vacant." Therefore, the question as to whether a partial decree would meet the ends of justice should have been considered. It is evident that the Appellate Court has failed to consider a material part of the evidence. The test of reasonableness and bona fides which is set out in Section 13(1)(i) has not been construed consistent with the law interpreted by the Supreme Court. Hence, without this Court expressing any conclusive view on the merits, it is necessary to remand the case to the Appellate Court, which is a Court of appeal on facts and law, to arrive at a decision afresh. Counsel appearing on behalf of the Respondent has fairly agreed that the matter may be remanded back to the Appellate Court for

fresh decision.

6. In order to facilitate a fresh determination by the Appellate Court, the impugned judgment and order dated 12th September 2005 of the Additional District Judge, Pune is quashed and set aside. The appeal stands restored to the file of the Additional District Judge, who shall pass fresh orders after hearing parties. Parties are directed to appear before the Additional District Judge, on 24th July 2006 for receiving directions. The Additional District Judge, is requested to endeavour to dispose of the appeal preferably by the end of December 2006.

7. The petition is allowed in these terms and shall stand disposed of.

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